

106TH CONGRESS
1ST SESSION

S. 399

To amend the Indian Gaming Regulatory Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 1999

Mr. CAMPBELL (for himself and Mr. INOUE) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Gaming Regulatory Act, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Gaming Regu-
5 latory Improvement Act of 1999”.

6 **SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGU-**
7 **LATORY ACT.**

8 The Indian Gaming Regulatory Act (25 U.S.C. 2701
9 et seq.) is amended—

10 (1) by striking the first section and inserting
11 the following:

1 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 “(a) SHORT TITLE.—This Act may be cited as the
3 ‘Indian Gaming Regulatory Act’.

4 “(b) TABLE OF CONTENTS.—The table of contents
5 for this Act is as follows:

- “Sec. 1. Short title; table of contents.
- “Sec. 2. Congressional findings.
- “Sec. 3. Purposes.
- “Sec. 4. Definitions.
- “Sec. 5. National Indian Gaming Commission.
- “Sec. 6. Powers of Chairman.
- “Sec. 7. Powers of Commission.
- “Sec. 8. Commission staffing.
- “Sec. 9. Commission—access to information.
- “Sec. 10. Minimum standards.
- “Sec. 11. Rulemaking.
- “Sec. 12. Tribal gaming ordinances.
- “Sec. 13. Management contracts.
- “Sec. 14. Civil penalties.
- “Sec. 15. Judicial review.
- “Sec. 16. Subpoena and deposition authority.
- “Sec. 17. Investigative powers.
- “Sec. 18. Commission funding.
- “Sec. 19. Authorization of appropriations.
- “Sec. 20. Gaming on lands acquired after October 17, 1988.
- “Sec. 21. Dissemination of information.
- “Sec. 22. Severability.
- “Sec. 23. Criminal penalties.
- “Sec. 24. Conforming amendment.”;

6 (2) by striking sections 2 and 3 and inserting
7 the following:

8 **“SEC. 2. CONGRESSIONAL FINDINGS.**

9 “Congress finds that—

10 “(1) Indian tribes are—

11 “(A) engaged in the operation of gaming
12 activities on Indian lands as a means of gener-
13 ating tribal governmental revenue; and

14 “(B) licensing those activities;

1 “(2) because of the unique political and legal
2 relationship between the United States and Indian
3 tribes, Congress has the responsibility of protecting
4 tribal resources and ensuring the continued viability
5 of Indian gaming activities conducted on Indian
6 lands;

7 “(3) clear Federal standards and regulations
8 for the conduct of gaming on Indian lands will assist
9 tribal governments in assuring the integrity of gam-
10 ing activities conducted on Indian lands;

11 “(4) a principal goal of Federal Indian policy is
12 to promote tribal economic development, tribal self-
13 sufficiency, and strong Indian tribal governments;

14 “(5) Indian tribes have the exclusive right to
15 regulate gaming activity on Indian lands, if the gam-
16 ing activity—

17 “(A) is not specifically prohibited by Fed-
18 eral law; and

19 “(B) is conducted within a State that does
20 not, as a matter of criminal law and public pol-
21 icy, prohibit that gaming activity;

22 “(6) Congress has the authority to regulate the
23 privilege of doing business with Indian tribes in In-
24 dian country (as defined in section 1151 of title 18,
25 United States Code);

1 “(7) systems for the regulation of gaming ac-
 2 tivities on Indian lands should meet or exceed feder-
 3 ally established minimum regulatory requirements;

4 “(8) the operation of gaming activities on In-
 5 dian lands has had a significant impact on com-
 6 merce with foreign nations, and among the several
 7 States, and with the Indian tribes; and

8 “(9) the Constitution of the United States vests
 9 Congress with the powers to regulate commerce with
 10 foreign nations, and among the several States, and
 11 with the Indian tribes, and this Act is enacted in the
 12 exercise of those powers.

13 **“SEC. 3. PURPOSES.**

14 “The purposes of this Act are as follows:

15 “(1) To ensure the right of Indian tribes to
 16 conduct gaming activities on Indian lands in a man-
 17 ner consistent with—

18 “(A) the inherent sovereign rights of In-
 19 dian tribes; and

20 “(B) the decision of the Supreme Court in
 21 California et al. v. Cabazon Band of Mission In-
 22 dians et al. (480 U.S.C. 202, 107 S. Ct. 1083,
 23 94 L. Ed. 2d 244 (1987)), involving the
 24 Cabazon and Morongo bands of Mission Indi-
 25 ans.

1 “(2) To provide a statutory basis for the con-
 2 duct of gaming activities on Indian lands as a means
 3 of promoting tribal economic development, tribal
 4 self-sufficiency, and strong Indian tribal govern-
 5 ments.

6 “(3) To provide a statutory basis for the regu-
 7 lation of gaming activities on Indian lands by an In-
 8 dian tribe that is adequate to shield those activities
 9 from organized crime and other corrupting influ-
 10 ences, to ensure that an Indian tribal government is
 11 the primary beneficiary of the operation of gaming
 12 activities, and to ensure that gaming is conducted
 13 fairly and honestly by both the operator and play-
 14 ers.”;

15 (3) in section 4—

16 (A) by striking paragraphs (1) through (6)
 17 and inserting the following:

18 “(1) APPLICANT.—The term ‘applicant’ means
 19 any person who applies for a license pursuant to this
 20 Act, including any person who applies for a renewal
 21 of a license.

22 “(2) ATTORNEY GENERAL.—The term ‘Attor-
 23 ney General’ means the Attorney General of the
 24 United States.

1 “(3) CHAIRMAN.—The term ‘Chairman’ means
2 the Chairman of the Commission.

3 “(4) CLASS I GAMING.—The term ‘class I gam-
4 ing’ means social games played solely for prizes of
5 minimal value or traditional forms of Indian gaming
6 engaged in by individuals as a part of, or in connec-
7 tion with, tribal ceremonies or celebrations.”;

8 (B) by redesignating paragraphs (7) and
9 (8) as paragraphs (5) and (6), respectively;

10 (C) in paragraph (5), as redesignated by
11 subparagraph (B) of this paragraph, by striking
12 “(5)(A) The term” and inserting “(5) CLASS II
13 GAMING.—(A) The term”;

14 (D) in paragraph (6), as redesignated by
15 subparagraph (B) of this paragraph, by striking
16 “(6) The term” and inserting “(6) CLASS III
17 GAMING.—The term”; and

18 (E) by adding after paragraph (6), as re-
19 designated by subparagraph (B) of this para-
20 graph, the following:

21 “(7) COMMISSION.—The term ‘Commission’
22 means the National Indian Gaming Commission es-
23 tablished under section 5.

24 “(8) COMPACT.—The term ‘compact’ means an
25 agreement relating to the operation of class III gam-

1 ing on Indian lands that is entered into by an Indian
2 tribe and a State and that is approved by the Sec-
3 retary.

4 “(9) GAMING OPERATION.—The term ‘gaming
5 operation’ means an entity that conducts class II or
6 class III gaming on Indian lands.

7 “(10) INDIAN LANDS.—The term ‘Indian lands’
8 means—

9 “(A) all lands within the limits of any In-
10 dian reservation; and

11 “(B) any lands the title to which is held in
12 trust by the United States for the benefit of
13 any Indian tribe or individual or held by any
14 Indian tribe or individual subject to restriction
15 by the United States against alienation and
16 over which an Indian tribe exercises govern-
17 mental power.

18 “(11) INDIAN TRIBE.—The term ‘Indian tribe’
19 means any Indian tribe, band, nation, or other orga-
20 nized group or community of Indians that—

21 “(A) is recognized as eligible by the Sec-
22 retary for the special programs and services
23 provided by the United States to Indians be-
24 cause of their status as Indians; and

1 “(B) is recognized as possessing powers of
2 self-government.

3 “(12) MANAGEMENT CONTRACT.—The term
4 ‘management contract’ means any contract or collat-
5 eral agreement between an Indian tribe and a con-
6 tractor, if that contract or agreement provides for
7 the management of all or part of a gaming oper-
8 ation.

9 “(13) MANAGEMENT CONTRACTOR.—The term
10 ‘management contractor’ means any person entering
11 into a management contract with an Indian tribe or
12 an agent of the Indian tribe for the management of
13 a gaming operation, including any person with a fi-
14 nancial interest in that contract.

15 “(14) NET REVENUES.—With respect to a gam-
16 ing activity, net revenues shall constitute—

17 “(A) the annual amount of money wa-
18 gered; reduced by

19 “(B)(i) any amounts paid out during the
20 year involved for prizes awarded;

21 “(ii) the total operating expenses for the
22 year involved (excluding any management fees)
23 associated with the gaming activity; and

24 “(iii) an allowance for amortization of cap-
25 ital expenses for structures.

1 “(15) PERSON.—The term ‘person’ means—

2 “(A) an individual; or

3 “(B) a firm, corporation, association, orga-
4 nization, partnership, trust, consortium, joint
5 venture, or other nongovernmental entity.

6 “(16) SECRETARY.—The term ‘Secretary’
7 means the Secretary of the Interior.”;

8 (4) in section 5(b)(3), by striking “At least two
9 members of the Commission shall be enrolled mem-
10 bers of any Indian tribe.” and inserting “No fewer
11 than 2 members of the Commission shall be individ-
12 uals who—

13 “(A) are each enrolled as a member of an
14 Indian tribe; and

15 “(B) have extensive experience or expertise
16 in Indian affairs or policy.”;

17 (5) in section 6(a)(4), by striking “provided in
18 sections 11(d)(9) and 12” and inserting “provided in
19 sections 12(d)(9) and 13”;

20 (6) by striking section 13;

21 (7) by redesignating section 12 as section 13;

22 (8) by redesignating section 11 as section 12;

23 (9) by striking section 10 and inserting the fol-
24 lowing:

1 **“SEC. 10. MINIMUM STANDARDS.**

2 “(a) CLASS II GAMING.—As of the date of enactment
3 of the Indian Gaming Regulatory Improvement Act of
4 1999, an Indian tribe shall retain the rights of that Indian
5 tribe, with respect to class II gaming and in a manner
6 that meets or exceeds the minimum Federal standards es-
7 tablished under section 11, to—

8 “(1) monitor and regulate that gaming;

9 “(2) conduct background investigations; and

10 “(3) establish and regulate internal control sys-
11 tems.

12 “(b) CLASS III GAMING UNDER A COMPACT.—With
13 respect to class III gaming conducted under a compact
14 entered into under this Act, an Indian tribe or State (or
15 both), as provided in such a compact or a related tribal
16 ordinance or resolution shall, in a manner that meets or
17 exceeds the minimum Federal standards established by
18 the Commission under section 11—

19 “(1) monitor and regulate that gaming;

20 “(2) conduct background investigations; and

21 “(3) establish and regulate internal control sys-
22 tems.”;

23 (10) by inserting after section 10 the following:

24 **“SEC. 11. RULEMAKING.**

25 “(a) IN GENERAL.—Subject to subsection (b), not
26 later than 180 days after the date of enactment of the

1 Indian Gaming Regulatory Improvement Act of 1999, the
 2 Commission shall, in accordance with the rulemaking pro-
 3 cedures under chapter 5 of title 5, United States Code,
 4 promulgate minimum Federal standards relating to back-
 5 ground investigations, internal control systems, and licens-
 6 ing standards described in section 10. In promulgating the
 7 regulations under this section, the Commission shall con-
 8 sult with the Attorney General, Indian tribes, and appro-
 9 priate States.

10 “(b) FACTORS FOR CONSIDERATION.—In promulgat-
 11 ing the minimum standards under this section, the Com-
 12 mission may give appropriate consideration to existing in-
 13 dustry standards at the time of the development of the
 14 standards and, in addition to considering those existing
 15 standards, the Commission shall consider—

16 “(1) the unique nature of tribal gaming as com-
 17 pared to commercial gaming, other governmental
 18 gaming, and charitable gaming;

19 “(2) the broad variations in the nature, scale,
 20 and size of tribal gaming activity;

21 “(3) the inherent sovereign rights of Indian
 22 tribes with respect to regulating the affairs of Indian
 23 tribes;

24 “(4) the findings and purposes under sections 2
 25 and 3;

1 “(5) the effectiveness and efficiency of a na-
 2 tional licensing program for vendors or management
 3 contractors; and

4 “(6) any other matter that is consistent with
 5 the purposes under section 3.”;

6 (11) in section 12, as redesignated by para-
 7 graph (8) of this section—

8 (A) by striking subsection (a) and insert-
 9 ing the following:

10 “(a) CLASS I GAMING.—Class I gaming on Indian
 11 lands shall be within the exclusive jurisdiction of the In-
 12 dian tribes and shall not be subject to the provisions of
 13 this Act.”;

14 (B) in subsection (b)—

15 (i) in paragraph (1)—

16 (I) in subparagraph (A), by strik-
 17 ing “and” at the end;

18 (II) in subparagraph (B), by
 19 striking the period at the end and in-
 20 serting “; and”; and

21 (III) by striking the flush lan-
 22 guage following subparagraph (B) and
 23 inserting the following:

24 “(C) such Indian gaming meets or exceeds
 25 the requirements of this section and the stand-

ards established by the Commission under section 11.”;

(ii) in paragraph (2)—

(I) in subparagraph (D), by striking “\$25,000” and inserting “\$100,000”;

(II) in subparagraph (E), by striking “and” at the end; and

(III) in subparagraph (F)—

(aa) by striking subclause

(I) of clause (ii) and inserting the following:

“(I) a tribal license for primary management officials and key employees of the gaming enterprise, issued in accordance with the standards established by the Commission under section 11 with prompt notification to the Commission of the issuance of such licenses;” and

(bb) in subclause (III) of

clause (ii), by striking the period and inserting “; and”; and

(iii) by adding at the end the following:

1 “(G) a separate license will be issued by
2 the Indian tribe for each place, facility, or loca-
3 tion on Indian lands at which class II gaming
4 is conducted;”;

5 (C) in subsection (c), by striking para-
6 graph (3) and inserting the following:

7 “(3) Any Indian tribe that operates, directly or
8 with a management contract, a class III gaming ac-
9 tivity may petition the Commission for a fee reduc-
10 tion if the Commission determines that the Indian
11 tribe has—

12 “(A) continuously conducted that gaming
13 activity for a period of not less than 3 years, in-
14 cluding a period of not less than 1 year that be-
15 gins after the date of enactment of the Indian
16 Gaming Regulatory Improvement Act of 1999;

17 “(B) implemented standards that meet or
18 exceed minimum Federal standards established
19 under section 11;

20 “(C) otherwise complied with the provi-
21 sions of this Act; and

22 “(D) paid all fees and assessments that
23 the Indian tribe is required to pay to the Com-
24 mission under this Act.”; and

25 (D) in subsection (d)—

1 (i) in paragraph (2)(B)(ii), by striking
 2 “section 12(e)(1)(D)” and inserting “sec-
 3 tion 13(e)(1)(D)”; and

4 (ii) in paragraph (9), by striking “sec-
 5 tion 12” and inserting “section 13”;

6 (12) in section 13, as redesignated by para-
 7 graph (7) of this section, by striking “section
 8 11(b)(1)” and inserting “section 12(b)(1)”;

9 (13) in section 14—

10 (A) in subsection (a)—

11 (i) in paragraph (1), by striking “sec-
 12 tion 11 or 12” and inserting “section 12
 13 or 13”;

14 (ii) in paragraph (3), by striking “sec-
 15 tion 11 or 12” and inserting “section 12
 16 or 13”; and

17 (B) in subsection (b)(1), by striking “sec-
 18 tion 11 or 12” and inserting “section 12 or
 19 13”;

20 (14) in section 15, by striking “sections 11, 12,
 21 13, and 14” and inserting “sections 12, 13, and
 22 14”; and

23 (15) in section 18—

24 (A) in subsection (a)—

1 (i) by striking “(a)(1) The” and all
2 that follows through the end of paragraph
3 (3) and inserting the following:

4 “(a) IN GENERAL.—

5 “(1) ESTABLISHMENT OF SCHEDULE OF
6 FEES.—Except as provided in paragraph (2)(C), the
7 Commission shall establish a schedule of fees to be
8 paid to the Commission annually by each gaming op-
9 eration that conducts a class II or class III gaming
10 activity that is regulated by this Act.

11 “(2) RATE OF FEES.—

12 “(A) IN GENERAL.—The rate of fees under
13 the schedule established under paragraph (1)
14 imposed on the gross revenues from each activ-
15 ity regulated under this Act shall be as follows:

16 “(i) No more than 2.5 percent of the
17 first \$1,500,000 of those gross revenues.

18 “(ii) No more than 5 percent of
19 amounts in excess of the first \$1,500,000
20 of those gross revenues.

21 “(B) TOTAL AMOUNT.—The total amount
22 of all fees imposed during any fiscal year under
23 the schedule established under paragraph (1)
24 shall not exceed \$8,000,000.

1 “(C) MISSISSIPPI BAND OF CHOCTAW.—

2 Nothing in this section shall be interpreted to
3 permit the assessment of fees against the Mis-
4 sissippi Band of Choctaw for any portion of the
5 3-year period beginning on the date that is 2
6 years before the date of enactment of the In-
7 dian Gaming Regulatory Improvement Act of
8 1999.

9 “(3) COMMISSION AUTHORIZATION.—By a vote
10 of not less than 2 members of the Commission, the
11 Commission shall adopt the rate of fees authorized
12 by this section. Those fees shall be payable to the
13 Commission on a quarterly basis.

14 “(A) IN GENERAL.—The aggregate
15 amount of fees assessed under this section shall
16 be reasonably related to the costs of services
17 provided by the Commission to Indian tribes
18 under this Act (including the cost of issuing
19 regulations necessary to carry out this Act). In
20 assessing and collecting fees under this section,
21 the Commission shall take into account the du-
22 ties of, and services provided by, the Commis-
23 sion under this Act.

24 “(B) FACTORS FOR CONSIDERATION.—In
25 making a determination of the amount of fees

1 to be assessed for any class II or class III gam-
 2 ing activity, the Commission shall provide for a
 3 reduction in the amount of fees that otherwise
 4 would be collected on the basis of the following
 5 factors:

6 “(i) The extent of regulation of the
 7 gaming activity by a State or Indian tribe
 8 (or both).

9 “(ii) The issuance of a certificate of
 10 self-regulation (if any) for that gaming ac-
 11 tivity.

12 “(C) CONSULTATION.—In establishing a
 13 schedule of fees under this subsection, the Com-
 14 mission shall consult with Indian tribes.”;

15 (ii) by redesignating paragraphs (4)
 16 through (6) as paragraphs (5) through (7),
 17 respectively; and

18 (iii) by inserting after paragraph (3)
 19 the following:

20 “(4) TRUST FUND.—

21 “(A) ESTABLISHMENT.—There is estab-
 22 lished in the Treasury of the United States a
 23 fund to be known as the Indian Gaming Trust
 24 Fund (referred to in this paragraph as the
 25 ‘Trust Fund’), consisting of—

1 “(i) such amounts as are—

2 “(I) transferred to the Trust
3 Fund under subparagraph (B)(i); or

4 “(II) appropriated to the Trust
5 Fund; and

6 “(ii) any interest earned on the in-
7 vestment of amounts in the Trust Fund
8 under subparagraph (C).

9 “(B) TRANSFER OF AMOUNTS EQUIVA-
10 LENT TO FEES.—

11 “(i) IN GENERAL.—The Secretary of
12 the Treasury shall transfer to the Trust
13 Fund an amount equal to the aggregate
14 amount of fees collected under this sub-
15 section.

16 “(ii) TRANSFERS BASED ON ESTI-
17 MATES.—The amounts required to be
18 transferred to the Trust Fund under
19 clause (i) shall be transferred not less fre-
20 quently than quarterly from the general
21 fund of the Treasury to the Trust Fund on
22 the basis of estimates made by the Sec-
23 retary of the Treasury. Proper adjustment
24 shall be made in amounts subsequently
25 transferred to the extent prior estimates

1 were in excess of or less than the amounts
2 required to be transferred.

3 “(C) INVESTMENTS.—

4 “(i) IN GENERAL.—It shall be the
5 duty of the Secretary of the Treasury to
6 invest such portion of the Trust Fund as
7 is not, in the judgment of the Secretary of
8 the Treasury, required to meet current
9 withdrawals. The Secretary of the Treas-
10 ury shall invest the amounts deposited
11 under subparagraph (A) only in interest-
12 bearing obligations of the United States or
13 in obligations guaranteed as to both prin-
14 cipal and interest by the United States.

15 “(ii) SALE OF OBLIGATIONS.—Any
16 obligation acquired by the Trust Fund, ex-
17 cept special obligations issued exclusively
18 to the Trust Fund, may be sold by the
19 Secretary of the Treasury at the market
20 price, and such special obligations may be
21 redeemed at par plus accrued interest.

22 “(iii) CREDITS TO TRUST FUND.—The
23 interest on, and proceeds from, the sale or
24 redemption of, any obligations held in the

1 Trust Fund shall be credited to and form
2 a part of the Trust Fund.

3 “(D) EXPENDITURES FROM TRUST
4 FUND.—

5 “(i) IN GENERAL.—Amounts in the
6 Trust Fund shall be available to the Com-
7 mission, as provided in appropriations
8 Acts, for carrying out the duties of the
9 Commission under this Act.

10 “(ii) WITHDRAWAL AND TRANSFER
11 OF FUNDS.—Upon request of the Commis-
12 sion, the Secretary of the Treasury shall
13 withdraw amounts from the Trust Fund
14 and transfer such amounts to the Commis-
15 sion for use in accordance with clause (i).

16 “(E) LIMITATION ON TRANSFERS AND
17 WITHDRAWALS.—Except as provided in sub-
18 paragraph (D)(ii), the Secretary of the Treas-
19 ury may not transfer or withdraw any amount
20 deposited under subparagraph (A).”; and

21 (B) in subsection (d), by striking “section
22 11(d)(3)” and inserting “section 12(d)(3)”.

23 **SEC. 3. CONFORMING AMENDMENTS.**

24 (a) TITLE 10.—Section 2323a(e)(1) of title 10,
25 United States Code, is amended by striking “section 4(4)

1 of the Indian Gaming Regulatory Act (102 Stat. 2468;
 2 25 U.S.C. 2703(4))” and inserting “section 4(10) of the
 3 Indian Gaming Regulatory Act”.

4 (b) INTERNAL REVENUE CODE OF 1986.—Section
 5 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986 is
 6 amended by striking “Indian Regulatory Act” and insert-
 7 ing “Indian Gaming Regulatory Act”.

8 (c) TITLE 28.—Title 28, United States Code, is
 9 amended—

10 (1) in section 3701(2)—

11 (A) by striking “section 4(5) of the Indian
 12 Gaming Regulatory Act (25 U.S.C. 2703(5))”
 13 and inserting “section 4(11) of the Indian
 14 Gaming Regulatory Act”; and

15 (B) by striking “section 4(4) of such Act
 16 (25 U.S.C. 2703(4))” and inserting “section
 17 4(10) of such Act”; and

18 (2) in section 3704(b), by striking “section 4(4)
 19 of the Indian Gaming Regulatory Act” and inserting
 20 “section 4(10) of the Indian Gaming Regulatory
 21 Act”.

○